In the Supreme Court
OF THE
United States

OCTOBER TERM, 1953

No. [redacted] 19

NATIONAL UNION OF MARINE COOKS & STEWARDS, a voluntary association,
Petitioner,

vs.

GEORGE ARNOLD, et al.,
Respondents.

REPLY MEMORANDUM FOR PETITIONER.

NORMAN LEONARD,
240 Montgomery Street, San Francisco 4, California,
Counsel for Petitioner.

PERNAU WALSH PRINTING CO., SAN FRANCISCO

Table of Authorities Cited

Cases

Constitutions

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1953

No. 529

NATIONAL UNION OF MARINE COOKS & STEWARDS, a voluntary association,
Petitioner,

vs.

GEORGE ARNOLD, et al.,
Respondents.

REPLY MEMORANDUM FOR PETITIONER.

1. The federal questions were properly raised. Respondents' Brief substantially concedes (pp. 2-3) that petitioner clearly invoked the protection of the due process clause of the Fourteenth Amendment before the Court below, but argues that the equal protection clause was not properly relied upon. However, the very language of petitioner's claim quoted in respondents' Brief (p. 4) specifically refers to both

of these clauses of the Fourteenth Amendment.[1] Since concededly the due process point was properly raised, and since the equal protection point is so closely related to it, no good purpose will be served by limiting the scope of review as suggested by respondents. Nor should the Court do so, for

> "No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is regarded as having been adequately presented." (*New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67.)

2. The assertion in respondents' Brief (p. 7) that "due process does not comprehend the right of appeal" is no answer to the question expressly left open by this Court in *Hovey v. Elliott*, 167 U.S. 409, 444:

> "Whether in the exercise of its power to punish for a contempt a court would be justified in refusing to permit one in contempt from availing himself *of a right granted by statute*, where the refusal did not involve the fundamental right of one summoned in a cause to be heard in his defense, and where the one in contempt was an

---

[1] "Such action, if pursued by this Court, would deprive appellants (petitioner) of property without due process of law, *and deny to them equal protection of the law: Hovey v. Elliott*, (1896), 167 U.S. 407 * * *" (R. 28.) (Italics supplied.)

actor invoking *the right allowed by statute,*[2] is a question not involved in this suit."

That specific question is involved in the suit at bar, and to answer it now the writ should be granted.

3. The differences (noted in the Petition, pp. 11-12) which both this Court and the Courts of Appeals have pointed out between the *Hovey* case and *Hammond Packing Co. v. Arkansas,* 212 U.S. 332, are ignored in respondents' Brief (pp. 8-9), which confuses punishment for contempt with the utilization of a presumption arising from the refusal to produce evidence.[3]

4. The discriminatory treatment accorded to petitioner is not denied, and the authorities cited in the Petition (p. 14) demonstrate that such treatment cannot withstand the test of the equal protection clause of the Fourteenth Amendment. That classifications in inheritance tax statutes based upon familial relationships (*Magoun v. Illinois Trust etc. Bank,* 170 U.S. 283) or in anti-trust acts in favor of agriculture or livestock in the hands of producers

[2]Italics supplied. Petitioner's contention that its right to an appeal is "granted" or "allowed" by statute in Washington (Petition, pp. 9-10) is nowhere challenged in respondents' Brief.

[3]This Court in the *Hammond* case emphasized that its decision there was not inconsistent with its holding in *Hovey:*

"Hovey v. Elliott involved a denial of all right to defend as mere punishment. This case presents a failure by the defendant to produce what we must assume was material evidence in its possession * * * The difference between mere punishment, as illustrated in Hovey v. Elliot, and the power exercised in this, is as follows * * *" (212 U.S. 350-351.)

(*Tigner v. Texas*, 310 U.S. 141), have been held, as respondents point out (p. 9), not to violate the equal protection clause hardly seems relevant here.[4]

To resolve the conflicts created between the decision below and the decision of this Court in *Hovey v. Elliott*,[5] and to assure petitioner its day in Court before a judgment of great magnitude is made final against it,[6] the writ should be granted.

Dated, San Francisco, California,
February 19, 1954.

Respectfully submitted,
NORMAN LEONARD,
Counsel for Petitioner.

---

[4]Another case cited by respondents (p. 10) is clearly beside the point, holding as it did that a statute permitting mutual insurance companies to do business through salaried employees while denying that privilege to stock companies, created an arbitrary and unconstitutional classification. (*Hartford Steam Boiler Inspection & Insurance Co. v. Harrison*, 301 U.S. 459.)

[5]Respondents do not even mention the Courts of Appeals cases noted in the Petition (p. 12) which follow the *Hovey* case: *Duell v. Duell*, 178 F. 2d 683 (CA DC, 1949) and *Deauville Associates v. Eristavi-Tchitcherine*, 173 F. 2d 745 (CA 5, 1949).

[6]Respondents' Brief impliedly recognizes that the charge that petitioner is "dissipating" its assets is not relevant to the question before the Court. (p. 6.) But since the argument is made with some vehemence (p. 11), it may not be amiss to point out that the charge is not undenied. (R. 37-38.)